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7 HERMAN TAMRAT,  
8 Plaintiff,

9 v.  
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11 SONOMA COUNTY MAIN ADULT  
12 DETENTION FACILITY  
13 ADMINISTRATION, et al.,  
14 Defendants.

15 Case No. 20-cv-08503-PJH

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28 **ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

29 Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. §  
30 1983. He has been granted leave to proceed in forma pauperis.

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35 **DISCUSSION**

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40 **STANDARD OF REVIEW**

41 Federal courts must engage in a preliminary screening of cases in which prisoners  
42 seek redress from a governmental entity or officer or employee of a governmental entity.  
43 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
44 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief  
45 may be granted, or seek monetary relief from a defendant who is immune from such  
46 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v.*  
47 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

48 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
49 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
50 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
51 is and the grounds upon which it rests.'"'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)  
52 (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]  
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the  
3 elements of a cause of action will not do. . . . Factual allegations must be enough to  
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550  
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state  
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme  
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal  
8 conclusions can provide the framework of a complaint, they must be supported by factual  
9 allegations. When there are well-pleaded factual allegations, a court should assume their  
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **LEGAL CLAIMS**

17 Plaintiff presents allegations of mistreatment while in custody.<sup>1</sup>

18 The Due Process Clause of the Fourteenth Amendment protects a post-  
19 arraignment pretrial detainee from the use of excessive force that amounts to  
20 punishment. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (citing *Bell v. Wolfish*,  
21 441 U.S. 520, 535-39 (1979)). To prove an excessive force claim under § 1983, a pretrial  
22 detainee must show only that the "force purposely or knowingly used against him was  
23 objectively unreasonable." *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). "A  
24 court must make this determination from the perspective of a reasonable officer on the  
25 scene, including what the officer knew at the time, not with the 20/20 vision of hindsight."  
26 *Id.* "A court (judge or jury) cannot apply this standard mechanically." *Id.* "[O]bjective

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<sup>1</sup> It appears that plaintiff was a pretrial detainee during the relevant time.

1 reasonableness turns on the ‘facts and circumstances of each particular case.’” *Id.*  
2 (quoting *Graham v. Connor*, 490 U.S. at 396).

3 A non-exhaustive list of considerations that may bear on the reasonableness of  
4 the force used include “the relationship between the need for the use of force and the  
5 amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to  
6 temper or to limit the amount of force; the severity of the security problem at issue; the  
7 threat reasonably perceived by the officer; and whether the plaintiff was actively  
8 resisting.” *Kingsley*, 135 S. Ct. at 2473.

9 Because the *Kingsley* standard applicable to excessive force claims by pretrial  
10 detainees is purely objective, it does not matter whether the defendant understood that  
11 the force used was excessive or intended it to be excessive. *Castro v. Cnty. of Los*  
12 *Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (en banc). A pretrial detainee can prevail  
13 by providing “*objective* evidence that the challenged governmental action is not rationally  
14 related to a legitimate governmental objective or that it is excessive in relation to that  
15 purpose.” *Id.* (quoting *Kingsley*, 135 S. Ct. at 2473-74)) (emphasis in original).

16 A claim for a violation of a pretrial detainee’s right to adequate medical care arises  
17 under the Fourteenth Amendment rather than the Eighth Amendment. See *Gordon v.*  
18 *County of Orange*, 888 F.3d 1118, 1122 & n.4 (9th Cir. 2018). The claim is evaluated  
19 under an objective deliberate indifference standard.

20 [T]he elements of a pretrial detainee’s medical care claim  
21 against an individual defendant under the due process clause  
22 of the Fourteenth Amendment are: (i) the defendant made an  
23 intentional decision with respect to the conditions under which  
24 the plaintiff was confined; (ii) those conditions put the plaintiff  
25 at substantial risk of suffering serious harm; (iii) the defendant  
26 did not take reasonable available measures to abate that risk,  
27 even though a reasonable official in the circumstances would  
28 have appreciated the high degree of risk involved—making the  
consequences of the defendant’s conduct obvious; and (iv) by  
not taking such measures, the defendant caused the plaintiff’s  
injuries.

*Id.* at 1125. With regard to the third element, a defendant’s conduct must be objectively  
unreasonable – “a test that will necessarily ‘turn[] on the facts and circumstances of each

1 particular case.”” *Id.* (citation omitted). The four-part test described in *Gordon* requires  
2 plaintiffs to prove more than negligence, but less than subjective intent – something akin  
3 to reckless disregard. *Id.*

4 Plaintiff states that on October 25, 2019, in an act of protest he pushed his food tray  
5 through the slot in his door to the ground and placed his hands through the slot.  
6 Defendant Sergeant Alcala ordered plaintiff to remove his hands from the slot and keep  
7 his hands in his cell. Plaintiff refused and Alcala attempted to rip loose plaintiff’s firm grip  
8 with the aid of defendant Deputy Mann. Alcala then began to hit plaintiff’s wrist with a  
9 closed fist and then hit plaintiff’s hand and knuckles with a flashlight and punched plaintiff  
10 in the face. Alcala and Mann then twisted plaintiff’s arms and banged them against the  
11 tray slot. As a result, plaintiff suffered injuries. These allegations are sufficient to state a  
12 claim against Alcala and Mann.

13 Plaintiff also presents general allegations of denial of medical and psychiatric care,  
14 retaliation, intimidation and harassment. He states that he has not received sufficient  
15 assistance from classification officials and grievance officials. However, he fails to  
16 provide any specific allegations with respect to these claims. These claims are dismissed  
17 with leave to amend.

## 18 CONCLUSION

19 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
20 standards set forth above. The amended complaint must be filed no later than **April 23,**  
21 **2021**, and must include the caption and civil case number used in this order and the  
22 words **AMENDED COMPLAINT** on the first page. Because an amended complaint  
23 completely replaces the original complaint, plaintiff must include in it all the claims he  
24 wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may  
25 not incorporate material from the original complaint by reference. Failure to file an  
26 amended complaint will result in this case only proceeding on the excessive force claim.

27 2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
28 court informed of any change of address by filing a separate paper with the clerk headed

1 "Notice of Change of Address," and must comply with the court's orders in a timely  
2 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
3 pursuant to Federal Rule of Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: March 23, 2021

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7 /s/ Phyllis J. Hamilton

8 PHYLLIS J. HAMILTON  
9 United States District Judge

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United States District Court  
Northern District of California